



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 2, 2004

Mr. J. Keith Gary
Grayson County Sheriff's Office
200 South Crockett Street
Sherman, Texas 75090

OR2004-7500

Dear Mr. Gary:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 208499.

The Grayson County Sheriff's Office (the "sheriff") received a request for "the names of the two jail employees placed on paid administrative leave." You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered your arguments.

We begin by addressing the sheriff's obligations under the Act. Pursuant to section 552.301(e) of the Government Code, a governmental body must submit the following information to this office within fifteen business days of its receipt of the request: (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. *See* Gov't Code § 552.301(a), (e). In this instance, you have not submitted any information responsive to this request.

You explain that you have not submitted any information because the requestor "did not request copies of documents. She requested the names of two employees that are under criminal investigation." It is implicit in several provisions of the Act that the Act applies only to information in existence at the time a request for information is received. *See* Gov't Code §§ 552.002, .021, .227, .351. A governmental body need not release information that

did not exist when it received a request or create new information in response to a request. *See Econ. Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed). However, a governmental body that receives a request has a duty to make a good faith effort to relate the request to information that it holds or to which it has a right of access. *See Open Records Decision No. 561 at 8 (1990)*.

Therefore, in this instance, the sheriff is obligated to search its records to determine whether the sheriff maintains any records that contain the information that the requestor is seeking. If the sheriff does not maintain any records that contain this information, the sheriff need not comply with the request. *See Bustamante*, 562 S.W.2d 266. However, if the sheriff does maintain records that contain the requested information, the sheriff must release such information to the requestor. *See Gov't Code § 552.302* (governmental body's failure to comply with procedural requirements of section 552.301(e) results in legal presumption that requested information is public and must be released unless compelling reason exists to withhold such information); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (same); *see also Open Records Decision No. 177 (1977)* (governmental body may waive statutory predecessor to section 552.108); *see generally Open Records Decision No. 522 at 4 (1989)* (discretionary exceptions in general).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. *Gov't Code § 552.301(f)*. If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id. § 552.324(b)*. In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id. § 552.353(b)(3), (c)*. If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id. § 552.321(a)*.

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839.

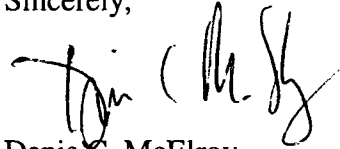
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/jev

Ref: ID# 208499

Enc. Submitted documents

c: Ms. Whitney Wyatt
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(w/o enclosures)